



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/902,441	07/09/2001	Filip Arnaut	VANM225.001AUS	5510

20995 7590 10/22/2003

Knobbe Martens Olson & Bear LLP
2040 MAIN STREET
FOURTEENTH FLOOR
IRVINE, CA 92614

EXAMINER

MARCANTONI, PAUL D

ART UNIT	PAPER NUMBER
----------	--------------

1755

DATE MAILED: 10/22/2003

10

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/902,441

Applicant(s)

ARNAUT

Examiner

Paul Marcantoni

Group Art Unit

1755

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 9/8/03
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-11 & 12-30 is/are pending in the application.
- Of the above claim(s) 1-11 & 14-16 is/are withdrawn from consideration.
- ☒ Claim(s) 13, 24-28, & 30 is/are allowed.
- ☒ Claim(s) 12, 19-23, & 29 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Notice of References Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

Applicant's arguments filed 9/8/03 have been fully considered but they are not persuasive.

Allowed Claims:

Claims 13, 24-28, and 30 are allowed because the prior art does not claim a powder (dry) of cement or mortar containing calcium tartrate particles having a mean particle size of less than about 30 microns. All the prior art references would appear to teach the presence of water or in solution. These claims have only been allowed because they claim a powder only which means no water present. (If water was present, it would have a pasty form and all other references add water).

Rejected Claims:

Claims 12, 19-23, and 29 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Haldas et al., Yamagisi et al., Donnison et al., or Mallon.

All of the above cited references teach a composition comprising calcium tartrate and cement or plaster. The references would not appear to teach the particle size less than about 30 microns. However, control of particle size would appear to be an obvious design choice for one of ordinary skill in the art unless applicants can show criticality. It would appear that all calcium tartrate components of these references are finely divided powders which would fall within applicants' claimed range.

Response:

The applicants argue that the examiner acknowledges that none of the references explicitly teach a particle size of less than 30 microns. First, all of the added calcium tartrate particles or powder are present in water *in solution* and thus would

certainly have a particle size less than 30 microns. Chemicals and Salts of acids in solid form are also conventionally provided in the form of a powder and thus would be less than 30 microns. (Note that the salts can be in liquid form but the particles would still be present in the liquid or acid solution).

It is also noted that applicants have not shown criticality with respect to their particle size range. One of ordinary skill in the art would have understood that their would be greater particle interaction with a powder as opposed to large clumps or particles because it is notoriously known in the art that the smaller the particle size the greater the surface area and that would mean an increased reaction with other particles. Thus, control of particle size, especially use of particle sizes in the powder size range is old in the art and is also conventionally used in the art.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

Art Unit: 1755

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Marcantoni whose telephone number is (703)-308-1196. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Bell can be reached on (703) 308-3823. The fax phone numbers for the organization where this application or proceeding is assigned are (703)-872-9310 for regular communications and (703)-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0651.



Paul Marcantoni
Primary Examiner
Art Unit 1755